Guide for Employers Who Hire International Students
# TABLE OF CONTENTS

- Introduction .................................................................................. 3
- Why Hire International Students? .................................................. 4
- Frequently Asked Questions. ......................................................... 5
- Practical Training For F-1 Students. ................................................. 7
- Stem Opt Extension. .................................................................... 9
- J-1 Academic Training. ................................................................. 12
- H-1B Speciality Worker Visas. ...................................................... 13
- J-1 Exchange Visitors. ................................................................. 15
- TN Status (For Canadian & Mexican Nationals) ......................... 16
- E-3 Visas For Australian Nationals. .............................................. 17
- Taxation Issues. ......................................................................... 18
- Resources. .................................................................................. 19
The purpose of this guide is to inform U.S. employers about F-1 and J-1 international student work authorization options. It includes a discussion on the new Optional Practical Training (OPT) STEM extension for Science, Technology, Engineering and Mathematics (STEM) students. It is important for employers to understand the U.S. immigration process when having discussions with prospective employees about co-op, internships and post-graduation employment.

This guide is not intended to and does not serve as legal advice; it is for informational purposes only. UC International Services serves international students directly and does not give immigration advice or respond to questions from employers. Content is subject to change. Employers are advised to consult an experienced U.S. immigration attorney with any additional questions.

The mission of UC International Services is to provide quality and confidential advice/services to international visitors engaged in educational/employment activities at the University of Cincinnati (UC), provide quality services/guidance to University departments who wish to admit or hire international visitors and provide quality educational programs to international visitors to help integrate them into all aspects of campus and community life. UC International Services seeks to empower students with the knowledge they need to navigate their visa status, including seeking and obtaining the authorization to work. While it is the student's responsibility to seek information on this authorization, the information in this guide provides a consolidated version of information publicly available on our website. This information pertains to UC-sponsored students only and may not apply to students at other institutions.

The Division of Experience-Based Learning and Career Education serves as a fully integrated career preparation hub within the University of Cincinnati. As the global birthplace of cooperative education, the division is a recognized leader in “real world” education. Within a thriving culture of collaboration, the division provides students, employers and partners a single point of contact for experience-based learning opportunities and transition-to-career services. Co-operative Education was invented at UC in 1906 and today the program is listed among the nation's best in “US News & World Report” rankings. Our co-op program is carefully designed and tailored to meet the individual needs of employers and the educational goals of student participants.
UC international students represent over 100 countries and pursue a diverse array of degrees and career goals. They possess qualities that top employers seek:

- Global perspectives with diverse viewpoints and experiences
- Multilingual and cross-cultural communication skills that are vital for companies to compete in a global economy
- Effective leadership and teamwork skills along with the ability to adapt to changes and persevere

Most international students are in F-1 or J-1 immigration status that includes off-campus work authorization benefits during and after the academic program. The remainder of this guide provides an overview of these work authorization options along with long-term employment visa options and resources. We hope the information will help to clarify and streamline the hiring process of international students.

Employers should note that a Social Security Number alone is not sufficient proof of work authorization for international students. It is critical that employers confirm an international student’s work authorization prior to the employment start date to prevent any liability for the student and the employer in the future.
Isn’t it illegal to hire international students because they do not have a green card?

No. Federal regulations permit the employment of international students on F-1 and J-1 visas within certain limits. These visas allow students to work in jobs related to their major field of study. F-1 students can work on “practical training.” J-1 students may work on “academic training.”

Even if it’s legal to hire international students, won’t it cost a lot of money and involve a lot of paperwork?

No. The only cost to the employer hiring international students is the time and effort to interview and select the best candidate for the job. The international student office handles the paperwork involved in securing the work authorization for F-1 and J-1 students. In fact, a company may save money by hiring international students because the majority of them are exempt from Social Security (FICA) and Medicare tax requirements.

How long can international students work in the United States with their student visa?

F-1 students are eligible for curricular practical training, as well as an additional 12 months of Optional Practical Training (OPT), either before or following graduation, or a combination of the two.

Students who complete bachelor, master and doctoral degrees in STEM fields may work for 24 additional months of OPT at an E-Verify employer. However, if they work full-time for one year or more on Curricular Practical Training (CPT) during their program of study, they are not eligible for OPT.

Students with a J-1 visa are usually eligible to work up to 18 months following graduation, three years for post-doctoral work. They may also be eligible to work part-time during their program of study. The Responsible Officer (RO) or Alternate Responsible Officer (ARO) will evaluate each student’s situation to determine the length of time for which they are eligible to work.

Don’t international students need work authorization before I can hire them?

No. International students must have the work authorization before they begin actual employment, but not before they are offered employment. In fact, J-1 students must have a written job offer in order to apply for the work authorization. Many F-1 students will be in the process of obtaining work authorization while they are interviewing for employment. Students can give employers a reasonable estimate of when they expect to receive work authorization.

What does the work authorization look like?

For OPT, F-1 students receive from USCIS an Employment Authorization Document (EAD), a small photo identity card that indicates the dates for which they are permitted to work.

For CPT, F-1 students receive authorization from the school (NOT from CIS) on page two of the student’s I-20. “No Service endorsement is necessary” - per 8CFR 74a.12(b)(6)(iii). J-1 students receive work authorization on the DS-2019 form. Typically, a letter is also issued by the RO or ARO at their institution.
What if I want to continue to employ international students after their work authorization expires?

With a bit of planning ahead, an employer can hire international students to continue to work for them in the H-1B visa category for a total of six years (authorization is granted in two three-year periods). The H-1B is a temporary working visa for workers in a “specialty occupation.” The application procedure to the USCIS is straightforward. The job must meet two basic requirements:

1) The salary must meet the prevailing wage as defined by the Department of Labor.

2) A bachelor’s degree is a minimum normal requirement for the position.

Doesn’t an employer have to prove that international students are not taking jobs from a qualified American?

No. American employers are not required to document that a citizen of another country did not take a job from a qualified American if that person is working under an F-1, J-1 or H-1B visa. Employers must document that they did not turn down a qualified American applicant for the position only when they wish to hire foreign citizens on a permanent basis and sponsor them for a permanent resident status (“green card”).

Can I hire international students as volunteer interns?

Normally, if the internship involves no form of compensation and is truly voluntary, the students may volunteer without having to do any paperwork with the USCIS. If, however, the internship provides a stipend or any compensation, students must obtain permission for practical training or academic training prior to starting their internship. Students should check with their employers to ensure that the company is allowed by law to offer unpaid internships.

What is the cost of E-Verify program, and how can I enroll in E-Verify program?

There is no cost to register in E-Verify program. Information on E-verify and the enrollment procedure can be found at the USCIS website at www.uscis.gov/everify.

Many employers are concerned about liability issues related to the employment of international students in the United States due to changes in federal laws governing non-citizens. This booklet addresses concerns employers might have about international students and work.

Getting permission for international students to work in the U.S. is not as difficult as many employers think. Most international students are in the U.S. on non-immigrant student visas (F-1 and J-1), and these international students are eligible to accept employment under certain conditions.
PRACTICAL TRAINING FOR F-1 STUDENTS

Practical training is a legal means by which F-1 students can obtain employment in areas related to their academic field of study. Students, in general, must have completed one academic year (approximately nine months) in F-1 status and must maintain their F-1 status to be eligible for practical training. There are two types of practical training:

- Optional Practical Training
- Curricular Practical Training

Curricular Practical Training (CPT)

CPT is available during a program of study for F-1 students who have work requirements/options that are considered an “integral” part of their curriculum of study. For students in cooperative education programs this will typically mean that they will begin a program involving a rotation of one semester of full time study followed by one semester of full time employment for a three year period, starting in year two of the program of study. Other students may qualify for CPT on a semester by semester basis based on their program of study.

Not all F-1 students are eligible for CPT but those that are will receive an I-20 endorsed for work at the employer with the exact dates of the work authorization indicated on page two of the I-20 form. The employer must see this endorsement on the I-20 to verify employment eligibility.

Optional Practical Training (OPT)

OPT must be authorized by the U.S. Citizenship and Immigration Services (USCIS) based on a recommendation from the designated school official (DSO) at the school which issued the I-20 to the student. Form I-20 is a government document which verifies the student’s admission to that institution. Student will receive an Employment Authorization Document (EAD) from the USCIS that establishes their ability to work. Students are eligible for 12 months of OPT for each higher degree level they obtain. Students who obtain a degree in Science, Technology, Engineering, and Mathematics (STEM) may be eligible for an additional 24 months of OPT.

Pre-Completion OPT

OPT can be done prior to completion of study. Students can request to work under the following circumstances:

1) part-time, a maximum of 20 hours per week, while school is in session

2) full-time during vacation when school is not in session

3) full-time/part-time after completing all course requirements for the degree

Post-Completion OPT

OPT can be authorized for full time after completion of the course of study. Full-time work means at least 20 hours of employment per week.
**Unemployment**

While on OPT, there are limits on how long international students can remain in the U.S. while unemployed. For students on 12-month OPT, the maximum amount of time they can remain unemployed is 90 days. Students who qualify for and receive the 24-month OPT extension can be unemployed for an aggregate of 150 days. This particular part of the rule puts responsibility on students to keep UC International Services up to date with name and address of their OPT employer. Unless UC International has the SEVIS system updated with the name and address of students’ employers, they will be accumulating unemployment time in SEVIS. Once students have reached the 90 or 150-day maximum, their F-1 status will be terminated.

**Cap-Gap OPT**

F-1 students who are the beneficiaries of pending or approved H-1B petitions, but whose period of authorized F-1 stay expires before the H-1B employment start date, can extend their status AND work authorization. This rule applies to all students on OPT, not just STEM students. The extension of duration of status and work authorization automatically terminates upon the rejection, denial, or revocation of the H-1B petition filed on the student’s behalf. OPT can be extended between 4/1 and through 09/30 of a given year if the student is the beneficiary of a timely-filed H-1B petition requesting change of status and an employment start date of October 1 of the following H-1B fiscal year. The Cap-Gap OPT is an automatic extension of duration of status and employment authorization to bridge the gap between the OPT end date and start of H-1B status. The automatic extension of OPT is terminated upon the rejection, denial, or revocation of the H-1B petition. The student must obtain a Cap-Gap I-20 authorizing the employment from a DSO at the institution they graduated from.


Students who have received OPT work authorization will be issued an EAD by the USCIS. Their name, photo and valid dates of employment are printed on the EAD. Employers should note that the average processing time for USCIS to issue the EAD is two or three months, and students may begin employment only after they receive the EAD which will indicate the starting and ending dates of employment. Students who have pending STEM extension application can continue working for up to 180 days while the application is pending.
24-month STEM OPT Extension

Effective May 10, 2016, the OPT extension for Science, Technology, Engineering and Mathematics (STEM) students increases from 17 to 24 months. This new rule expands the ability of students in STEM fields to potentially work for an employer for up to 36 months following completion of their program of study. It is important for employers to understand the requirements associated with hiring such students, as the new regulation increases the reporting burden on students, employers and institutions of higher education. It also expands the ability of the Department of Homeland Security to conduct site visits to employers of STEM OPT students. This guide will explain the requirements associated with hiring STEM OPT students.

Fields of Study

The term “STEM” means a field included in the Department of Education’s Classification of Instructional Programs taxonomy within the two-digit series or successor series containing engineering, biological sciences, mathematics, and physical sciences, or a related field. A STEM Designated Degree Program List is published on the Student and Exchange Visitor Program website:


Employer Qualification

In addition to the student completing a program of study in a qualifying field, the employer must be enrolled in E-Verify in order for a student to qualify for the STEM OPT extension. E-Verify is an electronic program through which employers verify the employment eligibility of their employees after hire. The program was authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

The employer must remain as a participant in good standing with E-Verify for the duration of the OPT employment. The employer must also provide the company’s E-Verify number to the student. The number is required when completing the I-765 application for the STEM OPT extension. More information about the E-Verify program can be found here:

In order for a student to apply for the STEM OPT extension, the employer must sign an I-983 Training Plan for STEM OPT Students. The I-983 includes a certification of adherence to the training plan and must completed by someone with signatory authority for the employer. The training plan must do the following:

- Identify goals for the STEM practical training opportunity, including specific knowledge, skills or techniques that will be imparted to the student, and explain how those goals will be achieved through the work-based learning opportunity with the employer
- Describe a performance evaluation process
- Define methods of oversight and supervision
- Explain how the training is directly related to the student’s qualifying STEM degree

As part of completing the Form I-983 Training Plan for STEM OPT Students, an employer must attest to the following:

- It has sufficient resources and trained personnel available to provide appropriate training in connection with the specified opportunity
- The student will not replace a full- or part-time, temporary or permanent U.S. worker
- The opportunity will help the student attain his or her training objectives. The student must present his or her signed and completed Form I-983 to a DSO at the educational institution of his or her most recent enrollment as part of the OPT application process

If there are material modifications to or deviations from the Training Plan during the STEM OPT extension period, the student and employer must sign a modified Training Plan reflecting the material changes, and the student must file this modified Training Plan with the DSO at the earliest available opportunity. Material changes relating to training for the purposes of the STEM OPT extension include, but are not limited to, the following:

- Change of Employer Identification Number (EIN) resulting from a corporate restructuring
- Reduction in compensation from the amount previously submitted on the Training Plan that is not the result of a reduction in hours worked
- Significant decrease in the hours per week that a student will engage in the STEM training opportunity, including a decrease below the 20-hour minimum employment level per week that would violate the requirements of the STEM OPT extension.


In addition, the employer must report the termination or departure of an OPT student to the DSO at the student’s school, if the termination or departure is prior to the end of the authorized period of OPT. Such reporting must be made within five business days of the termination. Employers must report this information to the DSO. The contact information for the DSO is on the student’s Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status (“Form I-20 Certificate of Eligibility”) and on the student’s Form I-983, Training Plan for STEM OPT Students.
Annual Evaluation

While on the STEM OPT extension, a student must submit on an annual basis an evaluation of the progress being made on the training plan. The evaluation is written by the student, but it must be signed by an appropriate individual in the employer’s company. A mid-point evaluation during the first 12-month interval and a final evaluation completed prior to the conclusion of the STEM OPT extension are required.

Employer Site Visits

The STEM OPT extension rule also provides the DHS with discretion to conduct employer site visits at worksites to verify whether employers are meeting program requirements, including that they possess and maintain the ability and resources to provide structured and guided work-based learning experiences. DHS will provide notice to the employer 48 hours before any site visit unless a complaint or other evidence of noncompliance with the STEM OPT extension regulations triggers the visit, in which case DHS may conduct the visit without notice.

Unemployment Limitation

The rule revises the number of days an F-1 student may remain unemployed during the practical training period. This rule retains the 90-day maximum period of unemployment during the initial period of post-completion OPT but allows an additional 60 days (for a total of 150 days) for a student who obtains a 24-month STEM OPT extension.

Cap-Gap Extensions

The rule continues to allow the DHS to temporarily extend an F-1 student’s duration of status and any current employment authorization if the student is the beneficiary of a timely filed H-1B petition and change-of-status request pending with or approved by USCIS. The Cap-Gap extension extends the OPT period until the beginning of the new fiscal year (i.e., October 1 of the fiscal year for which the H-1B status is being requested). The student will obtain an I-20 for a DSO at the school last attended, authorizing the employment until October 1.

Volunteer Work

The rule effectively prohibits students from using the STEM OPT extension to work in a volunteer capacity. Students must be paid commensurate with other similarly employed U.S. workers. DHS interprets the compensation element to encompass wages and other forms of remuneration, including housing, stipends, or other provisions typically provided to employees. While positions without compensation may not form the basis of a STEM OPT extension, the compensation may include items beyond wages so long as total compensation is commensurate with that typically provided to U.S. workers whose skills, experience, and duties would otherwise render them similarly situated.

Contact

Employers with questions about Optional Practical Training and their responsibilities under the STEM OPT regulations can contact UC International Services at 513-556-4278 or international.students@uc.edu.
International students on J-1 visas are eligible for work authorization called Academic Training. Students in bachelor’s or master’s programs can obtain 18 months of Academic Training. Post-doctoral students may apply for additional 18 months of Academic Training. Some J-1 program participants are also allowed to work part-time during the academic program. Academic Training is authorized by the Responsible Officer (RO) or Alternate Responsible Officer (ARO). Students should consult with the RO or ARO at their institution.

Fortunately, there is little paperwork for an employer who hires F-1 or J-1 students. All paperwork is handled by the students, the school, and USCIS (for OPT).

Federal regulations require that employment terminate at the conclusion of the authorized practical or academic training. However, students on an F-1 visa, or students on a J-1 visa who are not subject to a two-year home residency requirement, may continue to be employed, if they receive approval for a change in visa classification. The most common immigration statuses that allow for work beyond the student visa include: H-1B Specialty Worker; J-1 Exchange Visitor; TN Trade NAFTA (for Canadian and Mexican nationals); E-3 (for Australian Nationals); O-1 Extraordinary Ability.
H-1B specialty workers are international visitors who have skills and experience of a special nature that require at least a bachelor's degree or equivalent combination of education and experience. An applicant is not permitted to begin work for an employer until an H-1B is approved for the employer. There is an exception for individuals who currently hold H-1B status for another employer. H-1B employees have a maximum stay of six (6) years in the category no matter how many different employers they have. Employment can be granted for a maximum of three (3) year increments. Extensions beyond the six year limit are available if an employer has initiated green card efforts prior to the end of the fifth year of H-1B status.

The initial petition for an individual worker can be approved for up to three years. The validity of an H-1B petition is linked to the particular employer, employee, job duties, location and wage. If there are material changes in the terms of employment or the legal identity of the employer during the petition period, the H-1B may be considered automatically invalidated. If the employee engages in work activities not authorized on the petition, the employee is in violation of U.S. laws and potentially deportable. The employer may request an extension for up to an additional three years. However, most foreign workers are subject to a six-year limit in H-1B status. Any time spent working under a previous employer's H-1B petition will count toward the six year limit in H-1B status.

In some cases, it is possible to get permission to exceed the six-year limit on H-1B status. For example, if the green card process is initiated before the end of the employee's fifth year of H-1B status, extensions of H-1B status in one year increments are available until the green card application is decided. Those who are the beneficiaries of an approved I-140 are eligible for additional H-1B time in three year increments if the priority date is not current.

Is there a quota limiting the number of new H-1B workers?

The government's fiscal year is from October 1 to September 30. Sixty-five thousand (65,000) H-1B petitions can be approved during a fiscal year. Additionally, twenty thousand (20,000) petitions can be approved for individuals who have obtained a Master's degree or higher from a U.S. institution.

Each foreign national (with the three exceptions noted below), who is approved for H-1B classification is counted in this determination. However, approvals for extensions of stay in H-1B classification, sequential employment, concurrent employment, and amended petitions are not counted in this determination.

H-1B employees of higher education institutions, nonprofit research organizations and government research organizations are not counted toward the quota. However, if they change employers to a nonexempt employer, they will be counted toward the quota in the year they changed employers. Furthermore, individuals counted toward the quota in the previous six years of H-1B status who have been outside the United States for one full year and are again seeking admission pursuant to H-1B classification will be counted toward the quota.

Not every H-1B applicant is subject to the cap. Visas will still be available for applicants filing for amendments, extensions, and transfers unless they are transferring from an exempt employer or exempt position and were not counted towards the cap previously. The cap also does not apply to applicants filing H-1B visas through institutions of higher education, nonprofit research organizations, and government research organizations.

How long does it take to get an H-1B petition approved?

Currently, a reasonable window of expectation is about two to three months. Because each H-1B petition revolves around facts related to the individual candidate, as well as to the employer and the position, there is some variation in the preparation and processing time needed for H-1B cases. By paying an extra $1,225 expedited processing fee to U.S. Citizenship and Immigration Services, an employer can anticipate H-1B petition processing within fifteen (15) calendar days and can be filed no earlier than 4 months prior to start date. If the annual quota for new H-1B workers is reached, processing could be delayed until October 1st, when the next fiscal year begins. If the candidate is outside the United States, processing times can be increased by several weeks or months while the U.S. government completes security clearances and consular visa processing.
**What are the fees involved in filing an H-1B case?**

There are multiple fees involved in filing an H-1B petition. The total amount to be paid depends on whether the petition is a “new” petition and whether the employer is an institution of higher education or a non-profit governmental or research organization. There is a $460.00 application fee that is required of all H-1B petitions (this will increase in November). A $500.00 fraud prevention and detection fee is required for an employer’s “initial” petition. “Initial” petitions include any application by an employer for an employee who currently does not hold H-1B status or for an employee who currently holds H-1B status for another employer.

For employers who are not an institution of higher education or a non-profit governmental or research organization, an additional training fee is required. The fee is $750 for employers with 25 or fewer full-time equivalent employees and $1,500 for employers with 26 or more full-time equivalent employees. There is an optional premium processing fee of $1,225 that can be paid. The premium processing fee guarantees an answer on the petition within 15 days of receipt at the USCIS. Finally, if the employee already in the U.S. has dependents who need H-4 dependent status, a fee of $290.00 is required for the I-539 form. Employers that employ more than 50 workers, and more than 50% are H-1B specialty workers, have to pay a $4,000 training fee.

**Who usually pays the legal expenses?**

As with the filing fee, a Department of Labor regulation generally requires the employer to pay. The regulation states that all costs in connection with preparation and filing of the LCA and H-1B petition are considered the employer’s business expenses and must be paid by the employer, and the employer cannot be reimbursed by the employee.

Department of Labor regulations require that the employer pay the H-1B filing fees (application fee, training fee, fraud prevention and detection fee). The optional premium processing fee (paid to obtain faster processing) may in some cases be paid by the employee or a third-party.

**Can individuals add/change employers?**

Workers in H-1B status are only allowed to work for a petitioning employer. There is no restriction on changing employers or working for more than one employer concurrently. So long as the new employer follows proper H-1B petitioning procedures, an H-1B employee can add/change employers. Employers hiring workers already in H-1B status under certain circumstances may be allowed to commence the employment upon filing their H-1B petition, rather than waiting for approval.

**What is the portability of H-1B Status?**

Individuals who were previously provided H-1B status, who were lawfully admitted and who have not been employed without authorization in the United States, may accept new employment upon the filing by the prospective employer of an H-1B petition with the USCIS. If the petition is denied, the authorization to continue the employment ceases. The H-1B employee should maintain employment with the current H-1B employer until the new employer’s I-129 petition requesting portability is received by USCIS.

**What is Unpaid Benching?**

Employers are required to pay H-1B non-immigrants as stated on the LCA, even if the H-1B non-immigrant is not performing work (i.e. benched) unless the non-immigrant is not working for personal reasons unrelated to the job such as caring for an ill relative, maternity etc.
J-1 status holders are referred to as Exchange Visitors. Institutions must be designated as an exchange visitor program in order to issue a DS-2019 for J-1 status. J-1 exchange visitors are limited to work on the premises of the institution that issued the DS-2019. Under certain circumstances, some exchange visitors may be authorized to do work, give lectures, or engage in other activities off the premises of the sponsor. Such employment must be specifically authorized in writing by the sponsor. J-1 exchange visitors can fall into one of the following categories: Professor, Research Scholar, Short-Term Scholar, Specialist, Student (degree and non-degree), AuPair, Camp Counselor, Alien Physician, Trainee, Government Visitors, and Summer Work. Each category has its own time limitations.

Two-Year Home Country Physical Presence Requirement

The two-year home country physical presence requirement is one of the most important special characteristics of exchange visitor status and should be thoroughly understood by the employer. An exchange visitor subject to the two year requirement is not eligible to obtain permanent residency, H temporary worker or trainee, or L intra-company transferee status in the United States until they have resided and been physically present in their country of nationality or last legal permanent residence for a total of at least two years following departure from the United States. They are also not permitted to change to another non-immigrant status in the United States.
TN Status

Canadian and Mexican nationals can be admitted for employment under the terms of the North American Free Trade Agreement (NAFTA). The type of employment must be included on the approved list of occupations and can last up to three years in duration, although the employment can be renewed multiple times. This is a good employment option for Canadians when the H-1B cap is reached.

Under NAFTA (North American Free Trade Agreement), Canadian and Mexican professionals may apply to enter the U.S. under the TN visa classification.

<table>
<thead>
<tr>
<th>Main procedural step</th>
<th>Initial duration of status</th>
<th>Total time-limit cap on category</th>
<th>Processing time</th>
<th>Major advantage</th>
<th>Major disadvantage</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Three year maximum</td>
<td>No time cap</td>
<td>Instant approval</td>
<td>Quick</td>
<td>Not all professions qualify</td>
</tr>
</tbody>
</table>

Requirements for TN Status

- Proof of Canadian citizenship (Canadian Landed Immigrants and non-Canadian citizens must apply for H-1B status).
- Evidence that the intended U.S. employment and the applicant quality under Schedule 2 of NAFTA (A list of professionals who qualify under Chapter 15, Schedule 2, of NAFTA is provided in the following pages).
- Applicants must intend to engage in employment at a professional level and the employment must be prearranged by a U.S. company or institution.
- A letter from the U.S. employer detailing the nature of the employment. TN status is granted for only one employer at a time for a specific type of work. For multiple employers, multiple TN applications must be filed (if applying at the border).
- Form I-129 approved by the USCIS if applying to the USCIS Service Center instead of the border.
- Self-employed professionals are precluded from obtaining TN status.

A list of TN professions can be found at:
**E-3 Visas**

Australian nationals who have skills and experience of a special nature that require at least a bachelor’s degree or equivalent combination of education and experience can qualify for an E-3 visa. E-3 employees have a maximum stay of two years that can be renewed.

The E-3 visa requires the employer to obtain a Labor Condition Application from the Department of Labor. This can be applied for in country using form I-129 or abroad at the U.S. Consulate/Embassy.

**O-1 Alien of Extraordinary Ability**

O-1 is an employment category for persons of extraordinary ability. O-1 status is an excellent option for persons subject to the two year home residency requirement who are not eligible for H-1B specialty worker status. O-1 applicants must demonstrate that they have made outstanding contributions in their field, and they have risen to the top of their field and enjoy sustained national or international acclaim.
TAXATION ISSUES

What about taxes?

Unless exempted by a tax treaty, F-1 and J-1 students earning income under practical training are subject to applicable federal, state, and local income taxes. Information on tax treaties may be found in Internal Revenue Service Publication 519, U.S. Tax Guide for Aliens and 901, U.S. Tax Treaties.

Generally, F-1 and J-1 students are exempted from social security and Medicare tax requirements. However, if F-1 and J-1 students are considered “resident aliens” for income tax purpose, social security and Medicare taxes should be withheld. Chapter 1 of Internal Revenue Service Publication 519, U.S. Tax Guide for Aliens explains how to determine the residency status of international students. More information on social security and Medicare taxes can be found in Chapter 8 of Internal Revenue Service Publication 519, U.S. Tax Guide for Aliens and in Section 940 of Social Security Administration Publication No. 65-008, Social Security Handbook.

For your reference

The Code of Federal Regulations (CFR) Title 8 and Title 22 citation numbers for regulations governing practical training are as follows:

F-1 students: 8CFR 214.2 (f) (9) & (10)
J-1 students: 22CFR 62.23 (f)
CFR Title 8 citations governing IRCA requirements are:

F-1 students: 8CFR 274a.12(b)(6)(iii) and 8CFR 274a.12(c)(3)(i)
J-1 students: 8CFR 274a.12(b)(11)
RESOURCES

**U.S. Equal Employment Opportunity Commission (EEOC)**
http://www.eeoc.gov/laws/index.cfm

**U.S. Department of Labor Fact Sheet on Internships**

**U.S. Citizenship & Immigration Services (USCIS)**
http://www.uscis.gov/

**U.S. Department of State**
http://travel.state.gov/content/visas/english/employment.html

**E-Verify**
http://www.uscis.gov/e-verify

**American Immigration Lawyers Association**
http://www.aila.org